

PATENT APPLN. NO. 10/573,755
RESPONSE UNDER 37 C.F.R. §1.111

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REMARKS

Claim 13 has been amended to include the limitations of claim 15. Claims 1, 4, 7, 10, 11, 12 and 15 have been canceled. Claims 2 and 16 have been amended to depend on claim 13.

Claim 13 as amended defines the medical container of the present invention as comprising:

a separable partition wall section which is formed by heat-welding or bonding parts of container outer members opposed to each other;

a plurality of separation display sections provided on an outer surface of said partition wall section of each of the container outer members,

each separation display section being visible from outside the container outer member opposed to the container outer member on which the separation display section is provided, prior to separation of the partition wall section,

each separation display section being at least partially blocked by contents in the medical container when the partition wall section is separated,

each separation display section having a symbol display section and a symbol covering section, said

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symbol covering section being provided outside said symbol display section so as to cover and block the symbol display section so that the symbol display section cannot be visually recognized from outside the container outer member on which the separation display section is provided,

wherein the symbol display sections are positioned such that the symbol display sections on one of the container outer members are not visually blocked by the symbol display sections on the other of the container outer members.

The amendments to claim 13 are supported in claim 15 and by the descriptions in paragraphs [0024] to [0026] of the specification of the embodiments of the medical container of the present invention shown in Figs. 6 and 7.

Referring to the Office Action, the rejection of claims 1-4, 7 and 10-12 under 35 U.S.C. § 103(a) as being unpatentable over Sperko et al., US 5910138 ("Sperko"), in view of Hustad et al., US 5103979 ("Hustad"), in view of Brochman, US 3923198 is now moot in view of the cancellation of claims 1, 4, 7, 10, 11, 12 and 15 and the amendment of claim 2 to depend on claim 13.

Claims 13-16 are rejected in the Action under 35 U.S.C. §

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103(a) as being unpatentable over Sperko in view of Hustad in view of Brochman, further in view of Porchia et al., US 5564834 ("Porchia"). Reconsideration of this rejection is respectfully requested to the extent that it is considered by the Office to apply to claims 13, 14, 16, 2 and 3 as amended herein.

In the present Action, the Office is again relying on Sperko as disclosing a separable partition wall section that is at least partially blocked by contents in the medical container when the partition wall section is separated.

Hustad is relied on as disclosing a hermetically sealed package which includes a separation display section.

The Office notes that the combination of Sperko and Hustad discloses only a separation display section printed directly on a separation display means and lacks printing on an outer surface.

Brochman is cited as disclosing a tape closure system having an opacifying layer and obscuring effect and further comprising a separation display means provided on an outer surface of a container.

Applicants note that although the Office also considers the indicator strip of Brochman to be a "printing" on an outer surface of a partition wall section as previously recited in the claims of the application, claim 13 as amended no longer requires printing of

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the separation display sections on the partition wall.

The Office also admits that Sperko, Hustad and Brochman "lack printing on each of the container outer members" and cites Porchia as providing motivation to modify these references "by providing separation display sections on each container outer members [sic] as taught by Porchia to indicate clearly whether a closure has been opened, and allow inspection from both sides." (Action, page 8, last three lines).

Regarding claims 15 and 16, the Office admits that Sperko lacks a symbol covering section that prevents a symbol display section from being visually recognized from outside a container. Hustad is cited as teaching a symbol covering section. The Office also notes that Sperko, Hustad and Brochman do not provide symbol display and covering sections on each separation display section. The Office cites Porchia as "demonstrating a plurality of at least symbol display sections. In other words, Porchia teaches alternating or intermittent displays that show whether a closure has been opened." (Action, page 9, lines 12-14).

Applicants respectfully submit that the proposed combination of Sperko, Hustad, Brochman and Porchia is not logical and will not result in a medical container as defined in claim 13 and the claims dependent thereon.

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Initially, applicants maintain their position argued in prior papers submitted in this application that a person of ordinary skill in the art would not have been motivated or otherwise have had a proper reason, based on the prior art, to modify Sperko according to the teachings of Hustad and Brochman as proposed by the Office. The invention of Hustad incorporates a peel seal area which has a contact clarity condition when sealed but which results in an opacity condition when the seal is broken. The opacity condition would at least partially obscure the contents of the container of Sperko in the broken seal area and hinder the visual inspection of the contents as intended by Sperko.

The Office indicates in the present Action that this argument is not persuasive because, if Sperko is modified according to the teachings of Hustad and Brochman, an area remains transparent to allow the product to obscure visibility instead. (Action, page 10, last two lines).

The position of the Office is not supported. Hustad teaches that when the peel seal area is opened, "the areas of sealing will exhibit an opacity condition ..." (Col. 4, lines 50-51). Nowhere is it indicated that a seal area remains transparent when the seal is broken.

Second, claim 13 as amended requires the medical container to

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include a plurality of separation display sections provided on an outer surface of said partition wall section of each of the container outer members; each separation display section having a symbol display section and a symbol covering section, said symbol covering section being provided outside said symbol display section so as to cover and block the symbol display section so that the symbol display section cannot be visually recognized from outside the container outer member on which the separation display section is provided; and requires "the symbol display sections are positioned such that the symbol display sections on one of the container outer members are not visually blocked by the symbol display sections on the other of the container outer members".

As described in the specification of the present application in paragraph [0026] with reference to Fig. 7:

"In this arrangement, the symbols of the symbol display section 52 provided on the film on the other side can be visually checked when the partition wall section is seen from this side in the figure, but the symbol display section 52 provided on the film on this side cannot be visually checked since the symbols are covered by the symbol covering section 53. Thus, after the partition wall 2 is separated, the symbol display section 52 cannot

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be seen from outside the films on either side since both films are separated and the contents of the container come into the space between the films. Accordingly, the condition that the partition wall 2 is separated can be visually checked with ease."

Porchia fails to provide the necessary motive or reason to modify Sperko, as modified according to the teachings of Hustad and Brochman, to provide symbol display sections on the outer surface of said partition wall section of the container outer members which are positioned such that the symbol display sections on one of the container outer members is not blocked by the symbol display sections on the other of the container outer members. In Porchia, the closure members are colored at certain intermittent or interrupted portions to form dashed lines that are offset such that when the two dashed lines are contacted in the closed state, a single solid line is formed. An art-skilled person would not have had any reason, based on Porchia, to alternate the separation display sections of the container resulting from the proposed combination of Sperko, Hustad and Brochman, in which a symbol covering section is provided outside of a corresponding symbol display section, because such a solid line could not be obtained in the closed state.

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It is clear that the Office has simply combined unrelated teachings in the prior art to arrive at the claimed invention based on the clear hindsight provided by applicants' claims. Without such hindsight, the art-skilled person would not have had any reason to look to the teachings of Porchia to modify the separation display sections of the container resulting from the proposed combination of Sperko, Hustad and Brochman.

In Porchia, the symbol display section must be provided between a front wall 21 and a back wall 22 (on each of the inner surfaces of the walls 21, 22), not on the outer surface of the walls 21, 22. Porchia also does not disclose or suggest anything related to a separation display section in which a symbol covering section provided outside of a symbol display section.

Removal of the 35 U.S.C. § 103(a) rejections of the claims and an allowance of the present application are in order and are respectfully requested.

The foregoing is believed to be a complete and proper response to the Office Action dated December 17, 2009.

In the event that this paper is not considered to be timely filed, applicants hereby petition for an appropriate extension of time. The fee for any such extension may be charged to Deposit Account No. 111833.

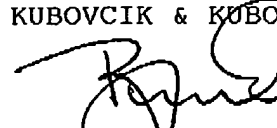
In the event any additional fees are required, please also

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charge Deposit Account No. 111833.

Respectfully submitted,
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